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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962.

No. 908

BERNHARD ROSEE,

Petitioner,

vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, a corporation; JAMES E. BAGGOT, JR., and DONALD W. MORRISON, individually and as a co-partnership, d.b.a. BAGGOT and MORRISON; HARRIS HAYWOOD; SIDNEY C. HAMPER; MARTIN H. MILEK; ROY C. LOFTUS; RICHARD ROSE; RAYMOND COMENZO and THOMAS H. HERR, individually and as members of the Arbitration Committee of the Board of Trade of the City of Chicago; and WARREN W. LEBECK, individually and as Secretary of the Board of Trade of the City of Chicago,

Respondents.

BRIEF OF RESPONDENTS THE BOARD OF TRADE OF THE CITY OF CHICAGO; SIDNEY C. HAMPER, MARTIN H. MILEK, ROY C. LOFTUS, RICHARD ROSE, RAYMOND COMENZO, AND THOMAS H. HERR; AND WARREN W. LEBECK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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STATEMENT.

We ask that the petition for certiorari be denied.

Petitioner, as a member of the Board of Trade (App. 4),[1]

1. "(App.)" citations refer to the Court of Appeals Appendix filed with this Court; citations to "(Add. App.)" refer to the Court of Appeals Additional Appendix also filed here.

executed his grain transactions on the Board's floor. He then "cleared" his daily trades through the "future commission firm" of Baggot & Morrison, fellow Board members (App. 4, 10).[2] In June, 1960, petitioner fell into dispute with Baggot & Morrison over the status of his account (App. 1, *et seq.*) and when the parties reached an impasse, a claim was lodged with the Board against petitioner for $13,654.41 (App. 4, *et seq.*).

Petitioner was notified by the Board (App. 10; Add. App. 7-8) and he promptly requested arbitration (Add. App. 9):

"June 10, 1960

Mr. Warren W. Lebeck, Secretary
Board of Trade Building
Chicago 4, Illinois

DEAR MR. LEBECK:

Your letter of June 8, 1960 has been received.

In regard to this matter I request that this be referred to the Arbitration Committee of the Chicago Board of Trade. As there are certain circumstances pertaining to this claim that should be arbitrated.

Sincerely,

BERNHARD ROSEE."

The Board of Trade's legislative charter permits it to arbitrate any dispute "as may *voluntarily* be submitted for arbitration" (Session Laws of Illinois, 1859, pp. 13-15, Section 7, Italics ours); the Board's Rules provide that its policy is "to encourage, *but not to compel*, arbitration" (Rule 183, Abst. 9, Italics ours).

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2. Members of the Board of Trade are not allowed to "clear" transactions unless they are also members of the Board of Trade Clearing House Corporation.

Petitioner's letter of June 10 resulted in the arbitration proceeding now in issue. (App. 11.) The arbitration hearing extended over a six-month period and a record of 611 pages plus exhibits was amassed; the ten volumes of the proceedings are a part of the record below. Although petitioner claims there were numerous errors in those proceedings, the record before the arbitrators was neither printed nor cited by petitioner in the Court of Appeals (see petitioner's Court of Appeals briefs and appendix filed with this court).[3]

The arbitrators rendered an award against petitioner for $11,323.78 (App. 11); petitioner appealed and the award was affirmed (App. 19).[4] Petitioner then refused to pay the award and was suspended from membership (App. 9, 19).[5]

Proceedings in the Superior Court of Cook County, Illinois.

After suspension, petitioner filed a suit against the Board of Trade in the Superior Court of Cook County, Illinois, seeking both a mandatory injunction requiring reinstatement to membership and a relitigation of his accounting dispute (Add. App. 13). The factual allegations of that complaint are substantially the same as those contained in the complaint later filed in the District Court in this cause (Add. App. 13, *et seq.*). Almost immediately after the suit

3. Rule 16 of the Seventh Circuit required the petitioner to print those parts of the record as fairly present the issues on appeal.

4. Rule 188 of the Board permits any party dissatisfied with an award to appeal to the Board's Committee of Appeals (App. 19).

5. Rule 130 of the Board provides that a member who refuses to pay an arbitration award shall be suspended from membership until payment. A member may apply for reinstatement by alleging under oath he has discharged his debts (App. 9).

was instituted, petitioner requested an injunction compelling reinstatement *pendente lite* (Add. App. 4); after hearing, the motion was denied (Add. App. 13, *et seq.*). Petitioner thereupon dismissed his action and abandoned that suit (Add. App. 16).

The Proceedings in the District Court.

After nonsuiting in the Superior Court, petitioner filed this suit (Add. App. 13, *et seq.*), alleging that the arbitration and his resultant suspension raised federal questions (App. 1). As in the state court, petitioner asked the federal court to rehear his accounting dispute and reinstate him to membership (Add. App. 13, *et seq.*). The District Court dismissed the case for lack of jurisdiction (Add. App. 15).[6]

QUESTION PRESENTED.

We restate the question presented as the petitioner does not do so fairly:

The only question presented is whether or not petitioner's accounting dispute with the future commission firm of Baggot & Morrison and the arbitration proceedings resolving that dispute raises a federal question?

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6. The petitioner also sought in the District Court, again as in the state court, a *pendente lite* order compelling the Board to reinstate him to membership; this motion was denied (Add. App. 29). At the hearing of this motion, petitioner reargued *de novo* the merits of his arbitration proceeding (Add. App. 19, *et seq.*). On cross-examination, petitioner testified that *after* his suspension he had traded approximately 305,000 bushels of grain in the Chicago market (Add. App. 27-28); yet petitioner's complaint alleges that he lost his means of livelihood as a grain trader because of the suspension (App. 19, 25).

REASONS FOR DENYING THE WRIT.

The petition is without merit because:

First: Due process and equal protection infringements only occur when the claimed acts of deprivation are of state or federal origin. *Shelley* v. *Kraemer*, 334 U. S. 1; *Civil Rights Cases*, 109 U. S. 3. The Board of Trade is, however, a private voluntary organization composed of private members; it is neither vested with state nor federal prerogatives or authority. *Thomson* v. *Thomson*, 293 Ill. 584, 127 N. E. 882. In the *Thomson* case, the Supreme Court of Illinois specifically negated the contention that the Board had any public powers (p. 589):

> "* * * No political or governmental power has been delegated to the Chicago Board of Trade. *The voluntary association of individuals composing that body at the time its charter was granted by the legislature was incorporated with the ordinary powers and privileges of private corporations, with authority to make such rules, regulations and by-laws from time to time as they might think proper* or necessary for the government of the corporation not contrary to the laws of the land, and to establish such rules, regulations and by-laws for the management of their business and the mode in which it should be transacted as they might think proper. There was no grant of any legislative power. The Board of Trade is merely a voluntary organization although incorporated under an act of the General Assembly. (*People* v. *Board of Trade*, 80 Ill. 134.) The grant of the power to adopt by-laws, rules and regulations for the government of the corporation and the management of its business is no more than a recognition of the inherent and implied power which is a necessary and inseparable incident of its existence." (Italics ours.)

Petitioner's suspension by the Board for failure to pay the award was thus not an exercise of state power but was instead the suspension of a member by a private organization for failure to pay an established debt. See *e.g. Board of Trade* v. *Nelson*, 162 Ill. 431. Petitioner's constitutional plaints are accordingly without predicate; there is neither state nor federal action. *United States* v. *Harris*, 106 U. S. 629; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673; *Williams* v. *Yellow Cab Co.*, 200 F. 2d 302.

Second: Petitioner claims that the Board is vested with state functions because (a) its charter accords it arbitration powers and (b) Illinois enforces such award when filed with its courts. Neither contention can withstand analysis:

(a) The Board arbitrates only those controversies voluntarily submitted to it by the disputants; both its charter and rules unequivocally so provide (App. 6, 9) and, in this very case, the Board arbitrated the controversy at petitioner's specific written request. The right to arbitrate disputes when submitted by agreement of the parties is manifestly not an exercise of sovereign authority but is instead by definition the very opposite of state action. *Mygeiron* v. *Chevy Chase Services, Inc.*, 258 F. 2d 155; *Stone* v. *Baldwin*, 226 Ill. 338, 80 N. E. 890.

(b) Illinois enforces the Board's arbitration awards by giving it the efficacy of a judgment only after the proceedings have been fully concluded; so promoting the salutory remedy of private arbitration is not uncommon among the states. (See e.g. Wisconsin Statutes Annotated §§ 298.09, 298.12; Burns Indiana Statutes Annotated § 3-214; Ohio Code Annotated § 2711.12; New Jersey Statutes Annotated, 2A:24-10; Massachusetts General Laws Annotated, Ch. 251 § 19;

Purdon's Pennsylvania Statutes Annotated, Ch. 5 § 58.1.) In Illinois, the selfsame enforcement provisos were likewise applicable to every arbitration award made within the state at the time of petitioner's award so that petitioner's contention would result in every Illinois arbitration becoming a state proceeding. Ill. Rev. Stat. 1959, ch. 10, p. 9. Manifestly, the particular remedy a state selects to recognize an arbitration award (whether by way of independent suit, *Couey* v. *Arrow Coach Lines*, 288 S. W. 2d 192 [Tex. Civ. App.], or by the instant simplified procedure of according the award judgment status) would not convert that arbitration into state action.

Third: Petitioner claims additional constitutional questions are presented because Illinois will not review the Board's arbitration proceedings and because no standards governed the arbitration. The scope of review of arbitration proceedings is solely a matter of state law and, whatever quantum of review is accorded, no constitutional question is raised. *Black* v. *Cutter Laboratories*, 351 U. S. 292.[7] Nor is a constitutional question raised concerning the alleged lack of standards when, as here, neither state nor federal action is involved. *Williams* v. *Yellow Cab Co.*, 200 F. 2d 302; *United States* v. *Cruikshank*, 92 U. S. 542. Moreover, petitioner's claim of lack of standards is not

7. Petitioner also misreads the Illinois law. Illinois reviews any arbitration award alleged to be the product of fraud and has voided arbitration proceedings and also the Board's membership actions when so tainted. *Ryan* v. *Cudahy*, 157 Ill. 108; 41 N. E. 760; *Smith* v. *Smith*, 28 Ill. 56; *Wechsler* v. *Gidwitz*, 250 Ill. App. 136; Ill. Rev. Stat. 1959, ch. 10, § 11. Petitioner presumably abandoned his Illinois suit because of an inability to prove such charges here.

even factual; Board Rule 186 provides petitioner may defend by any defense available to him in law or equity. (App. 7.)

Fourth: The petitioner's reliance upon the Commodity Exchange Act as a basis for review is likewise error; the Commodity Exchange Act contains no proviso for any civil remedy such as is sought here. It was enacted to protect the public generally and is enforced by administrative or criminal proceedings (See 7 U. S. C. A. § 1 *et seq.*); civil remedies are not imputed into such statutes. *Nashville Milk Co.* v. *Carnation Co.*, 355 U. S. 373; *Beegle* v. *Thompson*, 138 F. 2d 875, 880, *cert. den.* 322 U. S. 743; see also *Progressive Miners* v. *Peabody Coal Co.*, 7 F. Supp. 340, 345 (E. D. Ill.); compare *Reitmeister* v. *Reitmeister*, 162 F. 2d 691. When Congress authorizes a civil action pursuant to the several federal commodity laws, it does so explicitly, *e.g.*: the Packers and Stockyards Act, Sections 209 and 216 (7 U.S.C.A. §§ 209, 216); the United States Warehouse Act, Section 249 (7 U.S.C.A. §249); and the Perishable Agricultural Commodity Act, Section 499e (7 U.S.C.A. § 499e).

Additionally and signally, the Commodity Exchange Act is clearly extrinsic to petitioner's accounting dispute with Baggot & Morrison and his suspension for failure to pay an arbitration award, *Anderson* v. *Bingham & Co. Ry.*, 169 F. 2d 328; the petitioner's dispute was clearly nothing more then a common law controversy over the amount of a money debt.

CONCLUSION.

For the foregoing reasons, we respectfully request that the petition for certiorari be denied.

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